



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



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| In the matter of: |) | |
| |) | |
| ----- |) | ISCR Case No. 12-09491 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

December 12, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On July 3, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On August 9, 2013, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on September 13, 2013. DOHA issued a notice of hearing on October 2, 2013, and I convened the hearing as scheduled by Video Teleconference on October 25, 2013. The Government offered Exhibits 1 through 6, which were admitted without objection. Applicant testified on his own behalf and did not submit any exhibits at the time of the hearing. DOHA received the transcript of the hearing (Tr) on November 6, 2013. I granted Applicant's request to keep the record open until November 8, 2013, to submit additional documents. Additional documents were

identified as Exhibits A through H, and entered into evidence without objection. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and his witness, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and Applicant's testimony, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 43 years old. He is married, and he and his wife have one son together, and Applicant has one adopted son with his wife. Applicant graduated from high school and took some college courses. Applicant is employed by a defense contractor, and he is seeking a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 14 allegations regarding overdue debts under Adjudicative Guideline F., as 1.a. through 1.m. However, the SOR listed two different allegations, each as 1.c. The second allegation listed as 1.c. was amended at the hearing to now be considered as 1.n. (Tr at 14-15.) The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR as a collection account in the amount of \$409. Applicant admitted this allegation in his RSOR. At the hearing, Applicant testified that no payments have been made on this debt, but he could pay it off by the time he submitted the post-hearing documents. (Tr at 27-28.) In Exhibit B, Applicant wrote that he had made a payment by telephone with a credit/debit card of \$254.20 on November 8, 2013, and he planned to pay the balance by November 22, 2013. It appears that this debt will be resolved by the time this decision is issued.

1.b. This overdue debt is cited in the SOR as a medical account in the amount of \$36. Applicant admitted this allegation in his RSOR. Exhibit C establishes that this debt was paid by May 31, 2013. I find that this debt is paid in full.

1.c. This overdue debt is cited in the SOR as a charged off in the amount of \$3,860. Applicant admitted this allegation in his RSOR. In Exhibit D, Applicant wrote that he has not yet paid this debt or contacted the creditor. He indicated that he has made contact with a credit counseling service (CCS) to have all of his outstanding debts paid off. At this time, I find that this debt is still unresolved.

1.c. As reviewed above, the SOR lists two allegations under 1.c. This allegation will now be discussed as 1.n., below.

1.d. This overdue debt is cited in the SOR for a charged off account in the amount of \$2,861. Applicant admitted this allegation in his RSOR. In Exhibit E,

Applicant wrote that he is indebted to one creditor for several debts listed on the SOR, including 1.d., 1.i., 1.j., and 1.k. The information about this creditor will be discussed here. He wrote that his total balance to this creditor as of October 11, 2013, for these four debts is \$13,526.26, and he has made several monthly payments and thus far paid \$1,676 toward the debts. While Applicant submitted documents regarding these loans in Exhibit E, I cannot determine from the evidence that Applicant is current on these loans or what, if any payment plan Applicant has to resolve these debt. I find that this debt has not been paid or reduced.

1.e. This overdue debt is cited in the SOR for a charged-off account in the amount of \$9,528. Applicant admitted this allegation in his RSOR. In Exhibit F, Applicant wrote that this debt has been transferred to a new creditor. The letter from the creditor shows that the amount owed is \$5,700. Applicant also submitted documents showing that he has made five monthly payments of \$120 toward this debt. I find that Applicant is making a good faith effort to resolve this debt.

1.f. This overdue debt is cited in the SOR for a charged-off account in the amount of \$7,223. Applicant admitted this allegation in his RSOR. In Exhibit F, Applicant wrote that this debt has also been transferred to the same creditor as 1.e., above. The letter from the creditor shows that the amount owed is \$5,700. Applicant also submitted documents showing that he has made five monthly payments of \$120 toward this debt. I find that Applicant is making a good faith effort to resolve this debt.

1.g. This overdue debt is cited in the SOR for a collection account in the amount of \$349. Applicant admitted this allegation in his RSOR. In Exhibit G, Applicant wrote that he has not yet paid this debt or contacted the creditor. He indicated that he has made contact with a CCS to have all of his outstanding debts paid off. At this time, I find that this debt has not been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$668. Applicant admitted this allegation in his RSOR. In Exhibit G, Applicant wrote that he has not yet paid this debt or contacted the creditor. He indicated that he has made contact with a CCS to have all of his outstanding debts paid off. At this time, I find that this debt has not been resolved or reduced.

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$4,645. Applicant admitted this allegation in his RSOR. This debt was discussed under 1.d., above. I do not find that this debt is resolved or current.

1.j. This overdue debt is cited in the SOR for a collection account in the amount of \$3,044. Applicant admitted this allegation in his RSOR. This debt was discussed under 1.d., above. I do not find that this debt is resolved or current.

1.k. This overdue debt is cited in the SOR for a collection account in the amount of \$1,785. Applicant admitted this allegation in his RSOR. This debt was discussed under 1.d., above. I do not find that this debt is resolved or current.

1.l. This overdue debt is cited in the SOR for a collection account in the amount of \$2,927. Applicant admitted this allegation in his RSOR. In Exhibit G, Applicant wrote that he has not yet paid this debt or contacted the creditor. He indicated that he has made contact with a CCS to have all of his outstanding debts paid off. At this time, I find that this debt has not been resolved or reduced.

1.m. This overdue debt is cited in the SOR for unpaid taxes, interest, and/or penalties to the Internal Revenue Service (IRS) in the amount of \$827. Applicant admitted this allegation in his RSOR. In Exhibit G, Applicant wrote that he initially owed \$2,000 to the IRS, and he has been having \$200 subtracted from his account each month for four months. He now owes \$1,200 to the IRS. I find that this debt is being reduced by Applicant's payments, although he still owes more to the IRS than what was alleged in the SOR.

1.n. This overdue debt is cited in the SOR for a collection account in the amount of \$4,052. Applicant admitted this allegation in his RSOR. Applicant testified that this debt is still unpaid, and he did not submit anything in his post hearing documents to change the status of this debt. (Tr at 44.) I find that this debt is still unresolved.

Applicant explained that his financial problems occurred as a result of "just bad judgement." He was hoping that if he got more lucrative employment he could pay off his debts, but it did not work out as planned, and he "just let things get out of control." (Tr at 46-47.) He incurred most of these debts in the 2005 or 2006 time frame. (Tr at 54.) He only began attempting to resolve these debts after the security clearance process began.

Applicant testified that he has no new overdue debt, and since he and his family live with his mother-in-law, he does not pay rent; but he does give her money to help with things like property taxes, plumbing and groceries. (Tr at 47.)

Mitigation

Applicant submitted a monthly budget that reviews his current bills, and he also submitted his recent pay stubs. (Exhibit A.) While it shows he has put some thought into planning his future financial condition, it is not in the proper form to show if he is spending more than he is taking in every month. Applicant also wrote that he is looking into taking a program to help him plan his finances better. However, Applicant gave no indication that he has actually taken any kind of financial course.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19(a), "an inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant has accumulated significant delinquent debt.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Under AG ¶ 20 (b), it may be mitigating where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." As noted above, Applicant testified that his financial problems resulted from bad judgement so this mitigating condition does not apply to Applicant.

I also do not find that AG ¶ 20 (c) is not applicable, because, while Applicant indicated he has looked into financial counseling, he has not actually received any financial education. Similarly, I can not find that AG ¶ 20 (d) is applicable, because, as discussed above, while Applicant has "initiated a good-faith effort" to begin to repay overdue creditors, there is still far too much outstanding debt and Applicant only began attempting to resolve these overdue debts, most of which were incurred around 2005 or 2006, quite recently, after the security clearance process began. Therefore, I do not find that this mitigating condition is applicable. Finally, I do not find that any other mitigating condition is a factor for consideration in this case.

I conclude that until Applicant has significantly reduced or resolved his overdue debt in a far more significant amount, he has not mitigated the financial concerns of the Government.

Whole-Person Concept

Under the whole-person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the disqualifying conditions apply and the mitigating conditions do not apply, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.c., d., g. - 1.n.: | Against Applicant |
| Subparagraphs 1.a., b., e., f.: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge